



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD).No.680 of 2016 and CMP(MD).No.3203 of 2016

Subramanian : Revision Petitioner /Respondent /
Plaintiff

Vs.

Lakshmanan @ Raju : Respondent / Petitioner / Defendant

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 07.01.2016 made in I.A.No.249 of 2015 in O.S.No.25 of 2015 on the file of learned District Munsif Cum Judicial Magistrate, Natham, Dindigul District.

For Petitioner : Mr.P.Vairava Sundaram
For Caveator : Mr.C.Jayaprakash

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 07.01.2016 made in I.A.No.249 of 2015 in O.S.No.25 of 2015 on the file of learned District Munsif Cum Judicial Magistrate, Natham.

2. The revision petitioner is the plaintiff. The respondent is the defendant in O.S.No.25 of 2015 on the file of learned District Munsif Cum Judicial Magistrate, Natham.

3. The revision petitioner filed a suit for permanent injunction. The respondent did not file written statement in time. Therefore, he was set ex parte. The suit was posted for recording the ex parte evidence. Before, recording the ex parte evidence, the respondent filed I.A.No.249 of 2015 to set aside the ex parte order and also filed written statement and prayed for allowing the application and to take the written statement on file. The petitioner filed counter affidavit and submitted that the respondent was given sufficient time to file written statement and only to drag on the proceedings he did not file written statement in time. After being set ex parte, the respondent has come out with this application only to prolong the issue. The learned Judge considering the facts and materials on record allowed the application on condition that the respondent has to pay a sum of Rs.300/- to the petitioner. Against that order, the petitioner has filed the present revision.

4. The learned counsel appearing for the petitioner contended that the respondent filed application to set aside the ex parte order, after delay of 76 days. The respondent has not filed any application to



condone the delay in filing petition to file written statement. The respondent did not file any application seeking permission to file application beyond the statutory period of 90 days. Therefore, prayed for allowing the Civil Revision Petition.

5. The learned counsel appearing for the Caveator submitted that the respondent filed application to set aside the ex parte order within the time prescribed in the Limitation Act and therefore, there is no necessity to file an application seeking permission to file written statement. Once the ex parte order is set aside written statement will be taken on file as consequence of said order. As per the order of the learned Judge, the respondent paid Cost to the petitioner, but, the petitioner did not receive the said amount and therefore, the respondent deposited before the trial Court.

6. I have heard the learned counsels appearing on either side and perused the materials on record.

7. From the materials it is seen that the respondent was set ex parte on 31.07.2015 and the suit was posted for recording ex parte evidence. The petitioner was taking time for recording ex parte evidence. Before, ex parte evidence could be recorded, the respondent filed an application to set aside the ex parte order and to receive the written statement. In the circumstances, considering the fact that the respondent filed an application to set aside the ex parte order in time and also written statement, in the interest of Justice, that the respondent must be given opportunity to contest the case on merits. The learned Judge allowed the application on payment of the cost, the learned Judge exercised his discretionary power in proper perspective and compensated the petitioner by awarding a sum of Rs.300/- as costs and therefore, there is no irregularity or illegality warranting interference by this Court.

8. In the result, the Civil revision petition is dismissed confirming the impugned order dated 07.01.2016 made in I.A.No.249 of 2015 in O.S.No.25 of 2015 on the file of learned District Munsif Cum Judicial Magistrate, Natham. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

/True copy/

Sub Assistant Registrar

To

The learned District Munsif Cum Judicial Magistrate, Natham.

+1 CC to Mr.C.JAYAPRAKASH, Advocate, SR No.17192

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